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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TREVOR JAMES KIRK,

Defendant.

Case No. 2:24-cr-00527-SVW

SUPPLEMENTAL BRIEF IN SUPPORT OF
GOVERNMENT'S MOTION FOR ORDER
DISMISSING INDICTMENT, VACATING
JUDGMENT, AND EXONERATING BOND

DATE: August 4, 2025
TIME: 11:00 a.m.
PLACE: FSCH, Courtroom

The government hereby files this supplemental brief to address a jurisdictional issue relating to defendant's pending appeal and to address J.H.'s recently-filed objection to the government's motion to dismiss.

First, due to the pendency of defendant's appeal and the resulting question about this Court's jurisdiction to grant the motion to dismiss, the government hereby asks the Court, in the alternative, for an "indicative ruling" under Fed. R. Crim. P. 37(a). The indicative ruling should state that the Court would grant the

1 motion to dismiss if the Ninth Circuit remands the case for that
2 purpose. Id.

3 Second, in response to J.H.'s objection to the motion to
4 dismiss, the government notes that the Ninth Circuit recently
5 addressed a similar objection that J.H. raised in response to the
6 government's motion to reduce defendant's conviction from a felony to
7 a misdemeanor. See In re. J.H., 138 F.4th 1347, 1348-49 (9th Cir.
8 June 5, 2025). J.H. challenged the legal basis of the district
9 court's Rule 48(a) order striking the felony allegations from the
10 indictment. Id. at 1348. The Circuit denied the petition. Id. at
11 1349. As the Circuit explained, the Crime Victims' Rights Act
12 ("CVRA") provides victims with various rights to, for example,
13 address the Court regarding plea agreements, deferred prosecution
14 agreements, sentencing, and it found that this Court, in fact,
15 provided J.H. with the opportunity to exercise those rights. Id. at
16 1348. As the Circuit explained, however, "the CVRA's mandamus
17 procedure does not permit victims to challenge — and does not
18 empower a court of appeals to address — matters other than a
19 district court's denial of the rights enumerated in that statute."
20 See 18 U.S.C. § 3771(d)(3).

21 In this case, the Court has previously held that Rule 48(a)
22 authorizes a government motion to dismiss, even after a defendant is
23 convicted at trial. (See Dkt. 103.) As the government explained at
24 the hearing on the Rule 48(a) motion, the government has had
25 misgivings about the case. The time to review the evidence and the
26 trial transcripts and to consider how (or whether) to proceed with
27 the case was limited, which is why the government asked for more
28 time. The government's sentencing briefs and detailed review of

1 photo-captures from the video evidence reflect only some of those
2 concerns, including J.H.'s role in provoking defendant's use of
3 force. While explaining the decision to file the Rule 48(a) motion,
4 the government also noted that its remarks regarding the trial and
5 evidence would not be helpful for any subsequent appeal.

6 As to the matter of sentencing, the government argued that a
7 sentence of imprisonment would be unreasonable and, if memory
8 serves,¹ intolerable. Since that hearing, defendant has filed a
9 notice of appeal, and defendant's motion for bond pending appeal has
10 been denied, with a surrender date for later this month.

11 Based on all of the foregoing, and in the exercise of its
12 prosecutorial discretion, the government has determined that the
13 interests of justice warrant dismissal of the case and has elected to
14 not defend the conviction on appeal. With that decision now having
15 been made, an order dismissing the case and vacating the judgment is
16 the proper course of action.

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27 ¹ Counsel has not had a chance to review a transcript of the
28 hearing.

1 If the Court issues an indicative ruling that it would grant the
2 motion to dismiss upon remand, the parties can then file a joint
3 motion to remand the case for that purpose.
4

5 DATED: August 1, 2025.

Respectfully submitted,

6 BILAL A. ESSAYLI
7 United States Attorney

8 /s/ R.J.K.

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Assistant United States Attorney

10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA
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CERTIFICATE OF SERVICE

I am a citizen of the United States. I am over 18 years of age, and I am not a party to the above-entitled action. My business address is the United States Attorney's Office, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Suite 8000, Santa Ana, California 92701.

On this date, **August 1, 2025**, I served a copy of the attached document, **SUPPLEMENTAL BRIEF IN SUPPORT OF GOVERNMENT'S MOTION FOR ORDER DISMISSING INDICTMENT, VACATING JUDGMENT, AND EXONERATING BOND**, on the attorney of record for the individual identified in the indictment as "J.H." by e-mailing it to the following e-mail addresses:

careeharper@aol.com

chl@attorneyharper.com

I declare under penalty of perjury that the foregoing is true and correct. This declaration is executed on this day, **August 1, 2025**.

/s/ R.J.K.

Robert J. Keenan